The Role of Prosecutor in Criminal Investigation; Experience from Ethiopia

By: Berhanu Ahmed*

July 27, 2025

Welkite, Ethiopia

1. Introduction

I wander the role, powers and duties bestowed to prosecutors by the Ethiopian law and the practical reality, that there is a role confusion among powers of police officer and the prosecutor while they are implementing criminal justice system. Crime and criminal case is complex and it needs attention of legislature, executive, advocates and other stakeholders. The law gives a power to investigate crime to prosecutors and police. There are also institutions which the law gives power to investigate crimes or violation of rights like ombudsman.[1] Team or collaborative investigation[2] benefits the society seeking justice. In the case of criminal investigation what is the power of investigators is the theme which need its own investigation. So the aim of this article is to examine the relation between law and the practice on the matter of criminal investigation in Ethiopia. For this end the experience of other countries are encapsulated. Anyone who read the article can use as base for study on the issues in advance.

2. What is The Essence and Definition of Investigation?

Investigation is a process that can identify the existence of some fact. The term 'investigation' can have various meanings due to context and disciplines. In the context of justice system and this article 'investigation' means a proof to find out whether the alleged evidence is fact or real, whether there is a crime or not, whether the suspect has committed the crime or not, what is the cause to the outcome and so on. To extract the fact investigators look for evidences of individuals, victims, suspects, files, photographs, films, exhibits of sound or audio, witness of experts or non-experts, things that are used to commit a crime, buried bodies and many other things. Investigators

* Berhanu Ahmed is a prosecutor in Gurage Zone Justice office, Central Ethiopia Region, Ethiopia. Contact Email. Ahmedbro81@gmail.com available on telegram "Berhanu Ahmed View" channel https://t.merealityhabib

[1] Establishment of Ethiopian ombudsman proclamation no 1142/2019 as amended by proclamation no 1307/2023 article 28 gives a power to Ethiopian ombudsman to examine witness and suspects.

[2] The investigation made by prosecutor and police officer in collaboration.

also protect, take care of evidences and control or management of things that are related to the crime committed. According to literatures reviewed, criminal investigation is an applied science that involves the study of facts that are then used to inform criminal trials. So criminal investigation can include search, interview, interrogation, evidence collection and preservation and other methods of investigation.[3]

In general, investigation is a complicated process that needs logistics and trained man power with different disciplines. Now a days due to technological advancement crimes cannot be easily extracted. Investigation needs patience and technological support. In Ethiopia police and prosecutor cooperate to investigate crimes. The objective of cooperation among the two is to come up with procedurally and legally accepted criminal investigation.[4] But in practice there is a role confusion among the two, powers and duties are not exercised based on what the law says. Further explanations are provided next in this article.

3. International Instruments on the Role of Prosecutors

3.1. The Opinion of Consultative Council of European Union on the Role of Prosecutors[5]

The European Union consultative council is established by committee of ministers in Europe in 2005 to render opinion on matters of role of public prosecutor in criminal justice system. According to the opinion of the council; public prosecutor have the role of performing their duty fairly, consistently and expeditiously for smooth function of criminal justice system. Prosecutors should take in to account the questions relating to the effective management of resource. In addition prosecutors should follow up the lawfulness of criminal investigation so that there is no human right violation. They shall give binding instruction or advice where it is appropriate. Where prosecutors have supervisory role, they should ensure investigative bodies to keep informed the progress of criminal investigation.

[3] Criminal investigation. (august 20, 2020) https://en.wiwkipedia.org/wiki/criminal_investigation

[4] CRIME SENE INVESTIGATION (2013) A guide for Law enforcement, NIJ, PP. 15 https://www.nist.gov>files1>documents>forensics >

[5] The role of prosecutors in criminal investigation opinion no 10 (2015) consultative council of European prosecutors the committee of ministers of council of Europe < https://rm.coe.int/1680747720 >

Prosecutors should ensure their actions are in accordance with the law and in particular, respect the following principles;

- ✓ Equality before the law
- ✓ Impartiality and independence of prosecutor
- ✓ The right of access to lawyer
- ✓ The right of defense to full disclosure of all relevant material
- ✓ The presumption of innocence
- ✓ Equality of arms
- ✓ Independence of courts
- ✓ The right of an accused to a fair trial.

3.2.The Human Right Instrument Guideline on the Role of Prosecutor[6]

The guide line of United Nations on the role of prosecutors provides that; prosecutors shall perform active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over legality of investigation. The prosecutors shall perform their duty in accordance with the law and fairly, consistently and expeditiously and respect human dignity and uphold human right, thus contributing to ensuring due process and the smooth functioning of criminal justice system.

Prosecutors shall respect principles of impartiality, protect public interest, confidentiality, consider the views and concerns of victims by ensuring the they are informed of their right in accordance with declaration of basic principles of justice.

In nutshell the European Union consultative council and United Nations human right guide line. These instruments are not binding for every nation's prosecutor in the globe. Yet, the instruments can be taken as a best practice and guide line to enact national laws regarding role of prosecutor in criminal investigation.

4. The Legal Bases Governing Criminal Investigation in Ethiopia

The focus of this section is to explore legal instruments which govern criminal investigation.

[6] Guide Line On The Role of Prosecutors (Universal human right instrument adopted by 1990) https://www.ohchr.org/en/

- **The criminal procedure code**

Criminal procedure code is the first legal environment dealing with investigation, criminal trial and other special procedures. The code was enacted in 1962 during Emperor Hile Selase. Though, there are some amendments made in relation to specific matters, the code is the best one and is still operating. Prosecutors have a duty to prosecute and can decide on criminal files including bail. Pursuant to article 8 public prosecutors can take necessary measures and can instruct the police to ensure the police carryout their duty in accordance with the law. Article 17 stipulates about criminal accusations. When the prosecutor accepts criminal accusation it should be transferred to the police. Under article 39-45 the power of prosecutor to decide on the case investigated and particulars. And article 66 provides about what to say on the bail of suspect or accused. According to article 25 – 27 and article 30 of the procedure provides how the police shall investigate the suspect and witness. Finally article 32 of the procedure is about search and article 97 provides about exhibits.

- **Criminal code**

The criminal code proclamation number 414/2004 provides general principles which guide the prosecutor to determine whether the act is crime or not. So the police and prosecutor uses the criminal code in day today investigation activity.

- **Attorney General establishment proclamation**

The federal attorney general establishment proclamation number 943/2016 under article 6 /3/ /a/ provides that;

> save the powers given to the police by other laws, causes criminal investigation to be started on cases falling under the jurisdiction of federal courts, follow up report to be submitted on an ongoing criminal investigation, the investigation to be completed appropriately, orders discontinuation or restart of discontinued investigation on the basis of public interest or when it is clearly known that there could be no criminal liability, ensures that investigation is conducted in accordance with the law, gives the necessary instruction.

According to this article the prosecutors play pivotal role on criminal investigation.

- **The regional justice bureaus establishment and powers and duties proclamation**

The central Ethiopian regional justice bureau establishment proclamation number 03/2024 article 5 provides the same power and duties of prosecutor.

- **Deface force proclamation of Ethiopia**

The defense force proclamation of Ethiopia proclamation no 1286/2023 article 36/3/ provides military prosecutor directs criminal investigation.

5. The experience taken from other jurisdiction

There is no clear evidence which authorize when and where cooperative investigation is begun. According to Jhon Buchann police and prosecutors started to investigate crimes together in United States of America in 1930.[7] Latter on not only in United State the experience was expanded and to other jurisdiction and prosecutors actively involved in criminal investigation. The experience of France, United States, South Africa and Germany is highlighted as follows.

France

In France legal system the police informs prosecutors when the suspect or accused is under custody. The prosecutor cheek legality of manner of arrest and give direction to the police on investigation at hand.[8] In other sources the French government has made a criminal justice reform which empowered the specialized judge or judicial police.[9] The investigation can only be made by investigating judge supported by judicial police. The reform set a goal to come up with quick and fair investigation, the prosecutors are more supporting the defense and they was not seeking conviction of the accused not to damage the reputation of the accused and finally the proceeding

[7] John Buchanan, Police – Prosecutor Teams : Innovations in Several Jurisdictions NIJ report No.214 May/June 1989 < https://www.ncjrs.gov>pdffiles1>Dijitalization >

[8] Laurence Soubise and Jacquline Hodgson, Prosecution in France, Article in criminology may 2017, ‹ https://www.reaserchgate.net/publication/317037650 > and Jacquline Hodgson, Police the Prosecutor and Judge D' instruction : Judicial Supervision In France, Theory and Practice, British Journal of criminology vol. 41 issue: 2 Dated spring 2001 page 342-361 ‹ https://doi.org/10.1093/bjc/41.2.342

[9] CRIMINAL INVESTIGATION IN FRANCE, Babonneau and associes advocats penalties https://www.sba-advocates.com/criminal-defence-attorney-paris-criminal-investigation-in-france.mobile.htm

is open to the public.[10] So the office of public prosecutor is a minister public and authorized to prosecute criminal cases.

The power of public prosecutor is representing public prosecutor officer at the judicial court in person or in his or her substitute. Public prosecutor implements the criminal policy the criminal policy defined by the general instruction of minister of justice and where adopted by public prosecutor. The prosecutor has a power to coordinate the judicial component of crime prevention policy within the jurisdiction of the judicial court, in accordance with the national guide line for the policy determined by minister. The prosecutor have a power to initiate and exercising public action, directs criminal investigation police, identity cheek and enforcing sentence, the public prosecutor ensure prevention of breach of criminal law. The public prosecutor receives complaints and denunciation and assesses the action to be taken on the in accordance with them criminal procedure provision.[11]

- **United States of America**

When we see the legal system of USA the police officer reports to the prosecutor when crime is committed. The prosecutor which is informed by the police move to crime sane and support the police on collection of evidence, by determining admissibility and relevance of evidence and stay of accused (i.e. whether to release bail or stay arrested). In addition prosecutor present him-self when the police interrogate the accused to observe the right of accused is not violated and to evaluate relevance of the response of accused to the police officer for evidence.[12] The prosecutor collaborate with police by examining police report, witness statement, forensic analysis, and any other information on the case. In this phase the prosecutor mainly focus on admissibility and relevance of the evidence.[13] Investigations are carried out by police and other enforcement authorities, so prosecutor steps in to decide on the charge. But in some cases the police cannot do

[10] The Role Of The Public Prosecutor In France – Judge Dumas https://www.judgedumas2021.com/the-role-of-the-public-prosecutor-in-france/

[11] FRENCH-BUSINESS-LAW.COM https://french-business-law.com/french-legislation/legiscta000006151873-legsticta000006167418-section-3-powers-of-public-prosecutor

[12] Investigating Violent Crime : The Prosecutor Role, lessons learned from the field, NCJTC June 2018 ‹ www.crimegunintelcenters.org>2018/09 ›

[13] https://criminal-justice.ireaserchnet.com/criminal-justice-process/pre-tial-procedures/the-role-of-the-prosecutor

the investigation solely by himself. In some cases the prosecutor has discretionary authority to initiate investigation.[14]

- **South Africa**

In South Africa prosecutors support the police officer when there is criminal investigation.[15] The investigative police or detective investigate crimes.[16] The detective takes written statement and collect forensic evidence such as finger prints, footprints, blood and DNA samples. So the police office investigate crime and the case is handed over to prosecutor. The prosecutor decides whether to proceed criminal charge or not.[17] Furthermore the attorney prosecutor is empowered to initiate criminal charges, presenting the case in the court and negotiating plead guilty.[18]

- Germany

In Germany the prosecution office is divided by two, the supervisor and the individual. Criminal proceedings are initiated by filling criminal report of anybody who knows the commission of crime. The prosecutor record the report and starts to investigate. Criminal report can be brought to prosecutors or police or district courts. So prosecution office is not the only organization which accept criminal reports. When the police receives report, the first thing is to decide which evidence must be collected. The prosecutor supervise the police and sees legality of the investigation.[19] The police officers have only legal knowledge than skills of investigation. The prosecutor maintain control over conduct of criminal investigation by giving orders to the police. The police is legally obliged to comply with the requests and orders of prosecutor.[20]

The prosecutor may act independently as well as by presenting himself to the police to support criminal investigation. Practically the prosecutor do not engage in the process, until the final report is presented by the police. Then prosecutors decide how the investigation should end and order to

[14] Infra note 19 p139
[15] Mark Dyson, The Criminal Justice System And You – A Guide to the South African Justice System Refuges and Migrants, IPT, Page 10 ‹ www.ipt.co.za>pdf >
[16] Understanding the national prosecuting authority
[17] Understanding the South African Criminal Justice System: Key Components and Processes - Abogados Gold https://abogadosgold.com/justice/south-african-criminal-justice-system/
[18] What is a Prosecuting Attorney? | What Is Their Role in South African | BHA
[19] Di Manfred Duster, Julia Aileen Kreuts and Marco Mansdorfer 'the Public Prosecutor in Germany, Aspects of his Position and Duties, Procedural Principles' (1/2024) DPCE online ISSN:2037-6677 286
[20] Karolina kremens '*Powers of Prosecutor in Criminal Investigation*' eBook published march 21/2021 1st edition p150

conduct certain investigative measures in serious cases. In some scenarios prosecutors can not direct police, but they can take necessary measure.

6. The Role of Prosecutor in Criminal Investigation: Experience of Ethiopia.

As we have seen in earlier there is a legal ground for prosecutor to investigate crimes in collaboration with police and lead investigation process (give a direction to the police). In a strict reading of the law especially the attorney general establishment proclamation and other regional laws. Hence, there are two ways of participation in investigation for prosecutor. The first way is to stay with police for minimum of a week to maximum of three month[21] in police station investigation room to give necessary support and participate in investigation. After the period of time given is lapsed the prosecutor get back to his office and provide report. The other prosecutor participation by the same way using rotation. The second way is to participate in investigation of grave crime, hard or hot cases of public issue. This happen when the police requests for prosecutor to assign prosecutor to participate in the criminal investigation. In other sense the police reports that crime is committed and the prosecutor office sends one of the prosecutor to participate in the criminal investigation. Up on the request the prosecutor is sent and he come up with report after he accomplish the investigation. The prosecutor have the following role.

- From the beginning to closure of investigation he must avail himself when the police wants him.
- The prosecutors present in the crime scene and give direction to police in protection and collection of evidence, to protect human right of suspect.
- The prosecutor gives direction the police officer to collect court orders of arrest, search and things that are suspected to be outcome of the crime.
- Suspend the rights to use property related to money laundering crimes.
- Help victims or suspect who suffer damage due to crime.
- Control the investigation to be made in accordance with the law.
- The prosecutor decides whether to halt the investigation or otherwise of it.

7. Relevance of Presence of Prosecutor in Criminal Investigation

[21] Now a days this way of participation is not working in federal and regions like Amhara. Because federal ministry of justice has stopped to send prosecutors it investigate with police officer. But in Central Ethiopia Reginal states prosecutors participate in investigation routinely by rotation.

When prosecutors have done the investigation with police officer, the following advantages will happen.

- The police can easily finalize the investigation effectively. When there is no prosecutor the investigation takes time or delay, which means justice delayed for the community, i.e. it is against the principle of delivering accelerated justice.
- The prosecutor can understand the case in-depth and would have enough information.
- The prosecutor can do preliminary inquiry to save evidence.
- Prosecutors can take necessary measure to protect witness.
- Prosecutors help police officers who have legal knowledge gap.
- Prosecutors and investigating police officer share experience and skills.
- Prosecutors would have a chance to stand for human right and they can supervise whether the rights of witness and the accused is protected during interrogation.
- Prosecutor can protect the right of juvenile criminals.
- The prosecutor which the jurisdiction belongs can get information from the beginning of the investigation.
- The prosecutor prevent police officer not to forward the report of a case which is not properly completed.

8. Practical Problems Regarding Cooperative Investigation in Ethiopia

The law is crystal clear that prosecutors have a duty to direct police during investigation and they can decide whether to halt or continue the investigation file. The prosecutor can give necessary order to the police. Prosecutors have a duty to investigate to gather with police officer. But the law lacks clarity as to the duty of prosecutor during investigation. For this reason there is confusion of powers and duty which is manifested by the following features;

- ✓ Most of the time prosecutors participate directly on the investigation to examine witness and the accused while there is no police officer due to scarce man power of police officers or investigator.
- ✓ Prosecutors are lawyers and they lack skill or knowledge of investigation. So they collect irrelevant evidences brought by victims.
- ✓ Conflicts and dispute arouse among prosecutor and police officer. Hence there is a relation characterized by disrespect or abuse of power by prosecutor.

- ✓ Police officers refuse to accept the direction of prosecutor.
- ✓ The police decides on matters of release on bail without communicating or notifying the prosecutor.
- ✓ There is problem of commitment on the sides of prosecutor and police, and even some did not accept collaborative investigation or presence of prosecutor during investigation.

This all things have out comes of lack of quality of investigation on cases. Which have effect on delivery of justice to the people. The reader should bear in mind that these problems are not observed by every prosecutors and not always happening nor experienced in all jurisdiction

9. Measures to be taken

When there is problem it is important to take measure to avert it. So for me the following actions must be taken.

- ✓ The institutions must train prosecutors and police officers to avoid the tension. Because when we train we avoid problem of knowledge and perspectives.
- ✓ Prosecutors must work in due diligence to understand and respect the law. So, not only the government the prosecutors must build up themselves to ensure existence of rule of law.
- ✓ Prosecutors should respect and obey the law and have to stope to carry out each and every activities of investigation which needs police participation. For instance it a power of police officer to interrogate and record witness and accused.
- ✓ Legislators should come up with a better legal environment like directives that would govern the relation and to recommend prosecutors to understand how to apply what the law says in a strict sense.

The prosecutor must focus on the rights of accused and witness. Do the police give necessary warnings to the accused or witness? How the police collects evidences? They also have to focus on, how the police is searching individuals or places. Is the search made according to the procedure or not. Did the police bring the accused to the court in the constitutionally determined time or not? Is that necessary to enter into investigation by preliminary inquiry or not? Is that necessary to collect expert evidence or not? Is there any exhibit or not? Is there any participant which must be arrested and interrogated? Is the evidence relevant or admissible or not for the case? Is that important to report higher prosecutor or not? Is the case can be entertained in my jurisdiction or

not? And many other focus points can be raised. The prosecutor can focus on those questions based on the law.

10. Conclusive remarks

Prosecutor is one of the executive body empowered by the law to bring justice to the society. In doing so they supervise and work with police investigator. Traditionally we recognize prosecutors have a role in the court trial and institution of charges. Now a days they are investigators either directly or indirectly. The role of prosecutors in criminal investigation is crucial. Due to dynamic nature of crime, corrupt behavior and lack of well-trained human resource, legislatures and policy makers relay on prosecutor would fill the gap when they participate in criminal investigation. Though, the law is clear in some jurisdictions prosecutors do what police officers should have done. This problem can distort the total justice system. Then the relation between police and prosecutor comes to collapse. This will affect the public. So we need to pay attention to ‘what the law says?’ and should be obeyed.